

State of Minnesota
Public Education Brochure

From the Judges of Family Court

What to expect...

DIVORCE
in Minnesota

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Introduction

A divorce can be a painful and difficult experience, but if you understand the functions and limitations of the legal system, the process becomes less frustrating. It is our hope, as Judges of Family Court, that this pamphlet will give you a better understanding of the process, and help you get through your divorce with realistic ideas and goals. A divorce action is called “marriage dissolution” or “dissolution.”

Limitations

Minnesota’s divorce system is based on the principle of “no-fault,” meaning that a dissolution will be granted if either party believes that the marriage is over. Generally the causes of the failure of the marriage are not an issue in court. All that matters is that the marriage needs to be ended.

It is impossible for us to heal the emotional wounds created by your divorce. You must understand that the legal system is not a tool for punishment of your spouse. The courtroom isn’t the place for revenge. We must decide your case on the basis of unique facts. In most cases, the law does not permit us to compensate either of you for the other’s misconduct.

Settlement

The best way to conclude your case is to settle it. Through compromise and cooperation, a settlement can lead to greater mutual satisfaction and lessened animosity between you and your spouse. In most cases, negotiations toward settlement can be more productive and far less expensive than trial. If negotiations fail and you must try your case, we will make rulings that will permanently affect you and your children. Our rulings must be made exclusively upon the limited evidence that is presented in court, and nothing else. Because we are restricted in what we can and cannot do, a settlement can offer a wider range of options. Ask the court administrator for information about mediation programs. A mediator is a neutral person trained to help you and your spouse reach a settlement.

Variations

Every dissolution is different. Your results may be very different from your neighbor’s, friend’s, or relative’s. You cannot rely upon what happened in their cases and assume that your results will be the same. Cases that seem similar may, in fact, be very different and will be treated differently under the law. For this reason, you should look to your lawyer for your legal advice and

information. Your friends and relatives usually do not have a grasp of the law and your case, and accepting their advice may hinder you in the long run.

Finances

In the marriage dissolution, the income, assets and debts accumulated during the marriage must be allocated between you and your spouse. The law is that you and your spouse are financial partners during the marriage and are presumed entitled to share in both the assets and income the partnership made. You must make a full disclosure of your finances. For most people, life-styles change after a divorce. Since divorces do not create property or income, we must divide the marital resources between two separate households. It costs more to run two households than one. If you or your spouse have not been employed during the marriage, it may be necessary to seek employment. In considering a settlement, you should consider whether you can afford the attorney's fees to fully litigate your case. Fees and costs in contested cases can be quite high. Usually, a settlement prior to trial reduces the expenses considerably, an important consideration if you come to the divorce with limited resources.

Issues

Dissolutions generally involve four major issues: child custody and parenting time, child support, spousal maintenance and a division of property and debts. After the case is concluded, we may later be asked to modify custody, parenting time or support. You need to understand each of these aspects of your case.

Child Custody

Both parents and their children may be required to attend an education program before the dissolution is granted. The program will help you understand what affect divorce has on children, and how you can make the transition less traumatic for them. Remember, your marriage may be ending, but you will always be parents to your children. Most parents will share parental responsibility for their children after the dissolution. In doing so, you must communicate and confer with each other in making decisions that will affect your children.

Usually, we will give one parent primary residential care (custody) of the children. Unless there is a good reason to limit parenting time, we will grant the other parent frequent parenting time. We decide custody solely on what is best for the children. Often, one of the parties is hurt by our decision, especially if that party sees the decision in a "win/lose" light. In truth, there can be no loser if the children's welfare is protected.

In virtually all custody contests we will direct both parties to participate in mediation to resolve that issue. A mediator is an unbiased third party who can often assist the parties in reaching agreement upon what is best for the children. An agreement on custody will certainly make your case easier and help your children immeasurably in dealing with your divorce. If domestic violence has occurred, the Court cannot require you to participate in mediation.

If an agreement regarding parenting time is not reached, a custody study may be ordered, with costs assessed to the parties.

In cases where child abuse or neglect is alleged by a parent during a dissolution, we must appoint a guardian ad litem (GAL) to represent the best interests of the child with respect to custody, support and parenting time. A GAL may also be appointed if the court believes the conflict in the case presents a potential hazard to the child's welfare or the child's interests are not being adequately served. The GAL is to conduct an independent investigation into what would be best for the child and to advocate for the child's best interests. GAL's must maintain confidentiality of information, monitor the child's best interest throughout the proceedings, and present written reports to the court on the child's best interests. If a GAL is appointed, you are likely to be assessed a fee for their services.

Child Support

Aside from continuing to love your children and seeing them often, you have no higher obligation as a parent than to continue supporting your children after the divorce. Child support is more important than any other debt or financial obligation. Both parents are required to support the children but the non-residential parent will be directed to pay his/her portion of the support to the other. This does not mean that the residential parent is not contributing to the support.

Minnesota has adopted guidelines for child support that we are required to follow. Your friends and relatives may have been involved in divorces years ago or in other states and receive or pay higher or lower support than our guidelines provide. The child support in your case will be based upon the income of the parent paying child support, and the needs of your children under the guidelines established by the State. It is possible to deviate from the guideline amount but you must prove that the deviation is legally justifiable.

Spousal Maintenance

We find it necessary to award spousal support in some cases. As with child support, we will consider two factors: one party's need and the other's ability to pay. Both of these factors must be proven in court by the requesting spouse. Spousal support may be awarded to either a husband or wife and, depending on the length of the marriage and other factors, the spousal support may be permanent or for only a short duration.

Property Division

Under Minnesota law, we must try to make a "fair and equitable distribution" of marital property and debts. "Equitable" does not always mean "equal." Many factors, including child support, custody and spousal support awards, can cause us to make an unequal (but still equitable) division of property. We will not generally divide the property and debts that arise outside the marriage.

Attorney's Fees

We can order one party to pay some or all of the other's attorney's fees. We do this to assure that both parties have equal access to competent counsel. We do not award fees in every case, we must first find that one party has a greater ability to pay than the other does.

You cannot ever be certain that we will award fees. For this reason, and because of the great drain that fees can be on marital assets, everyone (parties and attorneys alike) should make every effort to resolve a dissolution case as economically as possible.

Do not write letters to your judge

We are not permitted to read letters containing facts or allegations about your case, nor can we speak with you or your friends/relatives on the telephone. If there is something we need to know, inform us by scheduling a hearing and filing motion papers.

Have Reasonable Expectations

You will certainly be disappointed if you expect to “win” on every issue. Rarely is either party happy about every ruling in a case. Even the best rulings leave both parties somewhat dissatisfied. Encourage your attorney to give you a realistic projection of the outcome of your case.

Keep communication open with your spouse/ former spouse

As long as children are involved, you and your former spouse will have to work together. Your children will suffer to the degree that you and your former spouse cannot communicate or cooperate.

Get professional help to deal with your emotions

Please do your best to keep emotions out of the case. Your feelings of anger, pain, and betrayal are understandable, but expressing them inappropriately in court may interfere with your ability to provide us with the information we need. If you have trouble with the hostility, anger, or depression that often occurs in divorces, don’t hesitate to get counseling to help you through it. A good counselor can help you, and your children, get through this difficult time and avoid having the anger become counterproductive.

Encourage and support parenting time (visitation)

If you are the custodial parent and the court has ordered parenting time between your children and your ex-spouse, you have a duty to encourage parenting time. You must do more than just stay out of the way or leave the choice to the children. Encourage your children to see your former spouse frequently and to enjoy the contact. Never use support or parenting time as a lever or bargaining chip in dealing with the other parent. However, if mental health, chemical dependency, abuse or other issues arise and you think your children are not safe with your ex-spouse, seek professional advice on what to do.

Give your children a chance

The way you and your spouse handle your divorce will have an enormous impact upon your children. If you argue and fight, their problems and pain will be magnified. By acting reasonably, you can help your children through one of the most difficult events of their lives.